No. 514.

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Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Jan. 10, 1901.

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CHRISTIAN HUUB, APPELLANT,

vs.

NEW YORK AND PORTO RICO STEAMSHIP COMPANY, APPELLEE.

SUPPLEMENTAL BRIEF FOR APPELLANT.

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(17,999.)

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In the brief for respondent, appellee, it is submitted, among other reasons for the dismissal of the libel—

"*That Porto Rican ports have not been foreign ports since May 1, 1900*" (point 1, page 6).

This point involves the concession that prior to May 1, 1900, Porto Rican ports were foreign in the sense in which the term "foreign" is used in the New York statute.

Respondent relies on the provisions of the act of April 12, 1900, and on chapter 600 of the Statutes of 1899–1900, as changing Porto Rican ports from foreign into domestic ports of the United States.

Counsel for respondent insist that the foreign trade of Porto Rico was converted into the coasting or domestic trade of the United States by the italicized words on page 23 of their brief, to wit, the words:

"*The coasting trade between Porto Rico and the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great coasting districts of the United States.*"

They insist that this language amounts to a positive enactment that trade with Porto Rico shall thereafter be coasting trade and regulated as trade between two great coasting districts.

The coasting trade of the United States and the domestic trade of the United States are and have always been one and the same thing. It is evident that the act from which the italicized extract was taken does not and was not intended to treat trade between the United States and Porto Rico as domestic trade. The various bills introduced at the session of Congress at which the act of April 12, 1900, was passed contain features looking to the conversion of the trade of Porto Rico into domestic trade. (See House bill No. 5073, House bill 6883, Senate bill 730.)

The first bill reported to the Senate from the committee on our insular possessions relating to Porto Rico declared the inhabitants of that island to be citizens of the United States. It applied to Porto Rico the laws of the United States relating to customs, commerce, and navigation. It provided for the nationalization of Porto Rican vessels, and that the coasting trade between Porto Rico *and any other portion of the United States* should be regulated, etc. (See Senate bill 2264.)

Senate bill 2264, as it was introduced by Senator Foraker, provided (line 3, page 3) that the laws and ordinances to be enforced in Porto Rico should "not conflict with the Constitution and laws of the United States." The committee, when it came to report the bill, struck out the words "*Constitution and.*"

The bill as introduced (page 8, lines 14, 15, 16, 17, and 18) provided that "the Constitution and all the statutory laws of the United States," etc., should "have the same force and effect in Porto Rico *as elsewhere* in the United States." The committee, before reporting the bill, struck out the words "*Constitution and all the,*" and also struck out the words "*as elsewhere.*"

The bill as introduced (page 18, line 21) contained the words "*or with the Constitution of the United States.*" The committee struck out those words.

The bill as reported by the committee (page 2, line 8) provided that the inhabitants of Porto Rico and their children "shall be deemed and held to be *citizens of the United States.*"

Also, page 3, lines 8, 9, and 10, "that the laws of the United States relative to commerce, navigation, and merchant seamen are hereby extended to and over Porto Rico."

Line 17, page 8, included the words "*any other portion of.*"

Lines 10 and 11 contained the words "It is hereby constituted a collection district."

Page 6, lines 3, 4, 5, 6, and 7, contained the provision that "That the President, by and with the advice and consent of the Senate, shall appoint a collector of customs for said district, who shall maintain his office at San Juan, which is hereby made a port of entry.

The foregoing provisions in the bill, as reported back by the committee, all of which looked to the treatment of Porto Rico as an integral portion of the United States, and to the treatment of its trade and commerce as domestic trade and commerce of the United States, were stricken out by Congress and the bill then enacted into the law now before this court.

This action by Congress proves beyond doubt it was the intention of Congress that Porto Rico should continue to be dealt with as a country "foreign" to the United States.

The provisions of chapter 600, relied on by respondent, follows the language of the act of April 12, 1900, and distinguishes between Porto Rico and Hawaii and Porto Rico and the United States.

There is one test of what constitutes the coasting or domestic trade of the United States or trade between the different ports of the United States that is universal.

Tariff or import duties are never levied on the goods, products, or manufactures of one portion of the United States when transported to and received at the ports of another portion of the United States.

Domestic trade is always free, and under the Constitution is necessarily free, so far as tariff or import duties are concerned.

Congress did not intend by the act of April 12, 1900, to convert the Porto Rican trade from foreign into domestic trade, nor did it intend to change the foreign character of Porto Rican ports to that of domestic ports of the United States.

Congress did intend by the act of April 30, 1900, to convert the Hawaiian trade into domestic trade of the United

States, and did intend that the ports of Hawaii should be deemed and held to be ports of the United States. This conclusion is illustrated by the differences between the act of April 30, 1900, providing for a government for Hawaii, and the act of April 12, 1900, providing revenues and a civil government for Porto Rico.

The inhabitants of Hawaii were declared to be citizens of the United States, section 4.

The Constitution of the United States and the laws of the United States, with some necessary exceptions, were applied to Hawaii to have "the same force and effect within the said territory (of Hawaii) as *elsewhere* in the United States."

The Hawaiian act, section 93, provided that imports from Hawaii into any State or Territory of the United States not the growth, production, or manufacture of said island, after July 7, 1898, and up to the time the act was to take effect, should pay duties under our tariff laws, but after the act took effect no import duties were provided for.

The Porto Rican act provides for the payment of import duties on articles the growth, production, and manufacture of Porto Rico, when introduced into the United States.

It also provides for the payment of import duties on articles the growth, production, and manufacture of the United States when introduced into Porto Rico.

It does not affect the principle that moneys thus raised are to be specifically devoted to the purposes of Porto Rico.

The Porto Rican act does not declare the people of Porto Rico to be citizens of the United States.

It does not extend the Constitution of the United States to Porto Rico.

Section 88 of the Hawaiian act provides that the "Territory of Hawaii shall comprise a customs district of the United States," with ports of entry and delivery at Honolulu, Hilo, Mahakanna, and Kaluilui.

The Porto Rican act does not constitute Porto Rico a customs district of the United States and does not establish ports of entry in Porto Rico.

Much confidence is manifested by counsel for respondent in the legal effect of the license granted by the Bureau of Navigation to the steamer *Ponce*. This grows out of the fact that the New York statute exempts from pilotage vessels "licensed *and* engaged in the coasting trade."

The license relied on was issued to the *Ponce* June 2, 1900. During the month of May, 1900, the *Ponce* carried on business or trade between Porto Rico and New York under a register, and paid port pilotage, on the assumption that the trade was between the United States and a foreign port.

June 2, 1900, at the special instance and request of the respondent company, a license was issued to the *Ponce*. That license authorized the ship to carry on the coasting trade for one year. It was issued pursuant to title 50, Revised Statutes, "Regulation of vessels in domestic commerce."

The license does not authorize the company or the ship to treat trade between Porto Rico and the United States as coasting or domestic trade, or intimate anything on that subject; unless in law the trade between Porto Rico and the United States is coasting or domestic trade, the license issued to the *Ponce* does not apply to such trade.

Under the New York statute exemption from pilotage depends on two facts: First, that the vessel is lawfully licensed;

and, second, that it is engaged in the coasting or domestic trade of the United States. If the trade in question be not the domestic or coasting trade of the United States, the license avails nothing in support of the exemption.

On pages 90 and 91 of the respondent's brief a circular, of date June 22, 1900, signed by O. L. Spalding, Acting Secretary, and addressed to collectors of customs and internal revenue and others concerned, reads as follows:

"In view of the provisions of the act of Congress approved April 12, 1900, entitled 'An act,' etc., Porto Rico as described in said act *is hereby constituted a customs collection district with San Juan, in the island of Porto Rico, as the port of entry in said district*, and Ponce, etc., as subports of entry in said district of Porto Rico, and *customs officers* shall be stationed at said ports with authority to enter and clear vessels, receive duties, fees and other moneys, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of the customs service and commerce may require."

Section 4 of the act of April 12, 1900, is supposed to have authorized the Secretary of the Treasury to perform the congressional function of creating *a customs collection district* and establishing *ports of entry* and authorizing the *customs officers at such ports appointed by the Secretary of the Treasury to enter and clear vessels*, receive duties, etc. Section 4 provides that the duties and taxes collected in Porto Rico under this act and the gross amount of import duties collected in the United States on articles of merchandise coming from Porto Rico shall be held as a separate fund and placed at the disposal of the President for the government and benefit of Porto Rico, and that the Secretary of the Treasury "*shall*

designate the several ports and subports of entry in Porto Rico, and shall make such rules and regulations and appoint such agents as may be necessary to collect the duties and taxes authorized to be levied, collected, and paid in Porto Rico by the provisions of this act, and shall fix the compensation and provide for the payment of all such officers, agents, and assistants as he may find it necessary to carry out the provisions hereof."

This section does not intimate that the Secretary of the Treasury is to have power *to constitute Porto Rico a customs collection district* of the United States, nor to appoint officers or agents with authority either to enter or clear vessels. He is to appoint agents *to collect the duties and taxes authorized to be levied, collected, and paid in Porto Rico*, and that is the limit and extent of his authority. So far as he has assumed to establish *a customs collection district*, or to appoint customs officers, or to authorize such officers to enter or clear vessels, he has simply usurped a power not conferred by the act of Congress, and to that extent his action is null and void.

The brief of respondent contains certain extracts from the opinion of Judge Brown, of the district court. One of them to this effect:

"In this sense of the word ('foreign') it is evident that Porto Rico, since the cession of the island by Spain to the United States, is not a foreign port, as it is subject solely to the sovereignty and dominion of this country."

The port of Tampico was subject solely to the sovereignty and dominion of this country, and yet this court, in Fleming *vs.* Page, 9 Howard, 616, held it to be a foreign port.

They also quote from Judge Brown:

"That Congress by the act of May 12, 1900, shows so clear an intention to alter the previous conditions and to assimilate trade between Porto Rico and the United States to the ordinary coasting trade between ports of the United States, that pilotage cannot now be claimed in the one case more than in the other."

But in the cases of trade between our Pacific ports and our Atlantic ports pilotage can be and is claimed, for the reason that the vessels engaged in such trade sail under registers and through waters in the main not contiguous to the United States.

Judge Brown says further:

"No doubt the words 'coasting trade,' as first construed, are extended beyond their original and primary significance, which means trade along the contiguous line of the coasts of the United States, but the whole subject being within the power of Congress, it is competent for Congress to extend the privileges and restrictions of that term as it shall see fit."

Coasting trade, in its original and primary significance, not only meant trade along the contiguous coast line of the countries of the United States, but meant domestic trade on which, under the Constitution, import or tariff duties cannot be imposed.

Of course, Congress may treat as coasting trade the trade with the West Indies or Central America or Europe, but it is not to be presumed, in the absence of unmistakable language, that Congress intends to do any such extraordinary thing, nor is it to be presumed that Congress meant either to violate the Constitution by imposing import duties on

the domestic products, goods, or manufactures of one portion of the United States when brought into the ports of another portion. It is rather to be presumed that Congress did not believe or intend Porto Rico to be a constituent part of the United States, or believe that the Constitution extended to Porto Rico, or that the trade between Porto Rico and the United States is domestic trade, or trade between the ports of different portions of the United States, otherwise the impost duties would not have been imposed.

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